



The HIGH ROAD

"Preserving public confidence in public servants."

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Attorneys and the State Ethics Code

The Hawaii State Ethics Commission often receives questions about the ethical conduct of attorneys. The Commission has jurisdiction to address some, but not all, of these questions. The following discussion explains how the State Ethics Code applies to attorneys.

Does the State Ethics Code apply to all attorneys? No. The State Ethics Code only applies to attorneys who are employees of the State, or who are elected or appointed State government officials. This includes the following persons:

- Attorneys who are employed by the Department of the Attorney General, the Department of Commerce and Consumer Affairs, the Department of Labor and Industrial Relations, the Office of the Public Defender, the Legislature and its Legislative agencies, the Judiciary, and other state agencies and departments.
- Attorneys who serve as members of the State Legislature.
- Attorneys who serve as members of State boards and commissions.

The State Ethics Code does not apply to attorneys in private practice unless they also hold State government office. The State Ethics Code does not apply to state judges. Judges are subject to the Code of Judicial Conduct, which is administered by the State Judiciary's Commission on Judicial Conduct.

What type of attorney conduct does the State Ethics Code cover? In general, the State Ethics Code covers attorney conduct that falls under one of the major provisions of the ethics laws. The following are examples of some of the questions involving attorney conduct that are covered by the State Ethics Code:

- **Gifts and gifts reporting.** A state attorney receives a gift from someone involved in official action by the attorney. Can the attorney accept the gift? Does the gift have to be reported on a gifts disclosure statement?
- **Outside employment.** A state attorney wants to acquire part-time employment with a private business. Can the attorney acquire this outside employment?
- **Use of state resources for private business purposes.** A state attorney is conducting private business activities using the attorney's state office and state equipment. Is this permissible?
- **Additional compensation for state services.** A state attorney gives a speech about a case that the attorney handled for the State. The attorney is offered an honorarium for the speech. Can the attorney accept the honorarium?
- **Conflicts of interests.** An attorney who serves on a state board is employed by a private law firm. The law firm is involved in a case before the attorney's board. As a state board member, can the attorney take official action on the matter? Does the attorney have a conflict of interest? (Note: Sections 84-14(a) and (b) of the conflicts-of-interests section of the State Ethics Code do not apply to state legislators.)

A state attorney owns stock in a business. The business is involved in a case before a state agency. Can the attorney give legal advice to the agency about the case?
- **Representation of clients before one's state agency.** An attorney who serves on a state board is asked to represent a private client on a matter before a state agency. Can the attorney do this? Can the attorney represent a client before the attorney's own state board?
- **Post-employment restrictions.** An attorney who served as a member of the Legislature and whose term has ended wishes to work for a

private law firm as a lobbyist for the law firm's clients. Can the attorney do this?

A state attorney who has terminated government service wishes to work for a private law firm and represent clients in claims against the State. Can the attorney do this?

What type of attorney conduct is not covered by the State Ethics Code? Questions regarding the conduct of private attorneys (who do not hold State government office) do not fall under the jurisdiction of the State Ethics Commission. Examples of topics that are not covered by the State Ethics Code include attorney malpractice claims, fee disputes, and failure by attorneys to respond to client inquiries.

Do any other offices handle questions about the conduct of attorneys? Yes. All attorneys who are licensed to practice law in Hawaii (including government attorneys and attorneys in private practice) must comply with the Hawaii Rules of Professional Conduct ("HRPC"). The Office of Disciplinary Counsel ("ODC") provides advice to attorneys about the HRPC, which covers areas such as client-lawyer relationship; fees; confidentiality of information; conflict of interest; advocate duties; law firms and associations; advertising; and misconduct. State attorneys who seek advice from the Hawaii State Ethics Commission are generally advised to consult with the ODC about the possible application of the HRPC. The ODC also handles complaints against attorneys who may have violated the HRPC.

Are there other laws that apply to the conduct of attorneys? Yes. Besides the State Ethics Code, there also may be other laws and restrictions that apply to the conduct of attorneys who hold State government office. Attorneys are advised to consult with the Department of the Attorney General, or their own state agencies, regarding the application of other laws and restrictions.

New Financial Disclosure Forms For 2002

The State Ethics Code requires certain state officials, board members, and employees to file annual financial disclosure statements with the Hawaii State Ethics Commission. The law requires filers to disclose interests such as private employment, ownership interests in businesses, real property holdings, and directorship or officership positions. The financial disclosure statements are due between January 1 and May 31 of each year.

The Commission recently revised its financial disclosure forms. The new forms will be mailed out to filers in January of 2002. Accompanying the new forms will be a revised set of instructions for filing. In addition, included with the instructions is a sample of a completed financial disclosure statement. This sample form should also assist filers in preparing their financial disclosure statements.

Filers should soon be receiving the revised financial disclosure forms and revised instructions. Filers who need assistance in completing their forms should contact the Commission's office at 587-0460.

Contact Us At Our New E-Mail Address

We have a new e-mail address! You can now contact us by e-mail at the following address:

ethics@hawaiiethics.org

**Season's Greetings
and
Happy New Year!**

The High Road is a publication of the Hawaii State Ethics Commission.

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